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IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

Severo Ochoa, Víctor Ochoa and Angel González, partners, doing business under the firm name and style of J. OCHOA Y HERMANOS, APPELLANTS,

vs.

ANA MARIA HERNANDEZ Y MORALES AND EUFEMIA HERNANDEZ Y MORALES, APPELLEES.

No. 92.

BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

This suit was begun by the plaintiffs (appellees) in the District Court of the United States for Porto Rico, as set forth in the statement of the appellants, in the month of October, 1908, for the purpose of cancelling certain so-called "possessory" and "dominion" titles which had theretofore been issued to one Raimundo Morales y Morales, maternal grandfather of the plaintiffs (appellees), who occupied a position in reference to his grandchildren in loco parentis; and for the cancellation of the conveyances made by the said Raimundo Morales y Morales to the partnership known as J. Ochoa y Hermano, and the inscription thereof in the Registry of Property of San Juan; and praying furthermore that the title to the land in dispute be ordered and decreed to be vested in the plaintiffs below (appellees); and that the said property be decreed "subject to the interest" of the plaintiffs. (Printed record p. 11).

Plaintiffs also asked that it be decreed that the defendants pay

to the plaintiffs such sum of money as might be found to be the fair valuation for the use and rental of the said property during the period they had been deprived of the use thereof, and damages for the fraud committed upon them, and for such other relief in the premises as the case might require. (Printed record p. 11).

After the delay incident to suits in equity, a final decree was entered on the fourteenth of April, 1910, declaring the property to belong to the plaintiffs; declaring them to be the legal owners thereof by inheritance, and entitled to the possession thereof as against the defendants; and that the defendants J. Ochoa y Hermanos had been merely holding the property adversely to them and against their better rights and title; ordering the cancellations as prayed for, and the delivery by the defendant firm of the possession of the property to the plaintiffs; from which decree the appellants have appealed.

ARGUMENT.

The principal question in this case is the question raised and decided upon the demurrer (printed record pp. 6, 7), which demurrer was overruled for the reasons stated by the Judge of the District Court of the United States for Porto Rico in his opinion filed December twenty-sixth, 1908, and reported in volume 4, Porto Rico Federal Reports, at page 400, which opinion does not appear as part of the record herein. The point of the demurrer is that the plaintiffs had a plain, adequate and complete remedy at law "in and concerning the matter set forth in said bill, and that therefore the cause of action set forth in said bill is not within the jurisdiction of a court of equity." (Printed record p. 7).

I.

The District Court of the United States had jurisdiction, on its equity side, for the following reasons:

1. The plaintiffs had no remedy at all at law, and were forced to apply to a court of equity to obtain an adequate remedy, because the legal title was vested in defendants, and

they must depend upon their right to an equitable remedy, until a court of equity should have determined that their title was in fact the best legal title.

2. Because this is a suit in which fraud is alleged, and cancellation asked for, cancellation being the only adequate remedy, and the other prayers of the bill merely supplementary to the principal prayer asking for the cancellation or a declaration of the nullity of the "possessory" and "dominion" titles and of the defendants' conveyance had thereunder, and the inscription thereof in the registry of property.

3. Because it is a rule of property in Porto Rico that the legal title is vested in him who has the recorded "dominion" title, or title of ownership, and it is necessary, before asking for the recovery of property, that this nullity be decreed and cancellation ordered.

4. Because there was no prayer for the possession of the property,—merely that it be decreed "subject to the interest" of the plaintiffs, and the court could not decree anything in regard to the possession, under the rule of property in Porto Rico, until the nullity and cancellation had been decreed.

5. Because the defendants, as suggested in the opinion on the demurrer above referred to (Porto Rico Federal Reports Vol. 4, p. 400), should be declared trustees ex maleficio for the benefit of the plaintiffs, which would make clear their right to equitable relief.

6. Because in Porto Rico there is no distinction between law and equity; neither is there any trial by jury in civil cases in the local courts. And because there is no legal or valid reason for a jury trial being insisted upon in civil cases in the District Court of the United States for Porto Rico. Therefore a litigant in the District Court of the United States for Porto Rico would not be deprived of any inherent right from the fact that a case, which ordinarily would be tried at law

with a jury, is tried in equity, the right to a trial by jury in civil cases not existing in Porto Rico, being heretofore only conceded.

7. Because the mortgage deed and conveyance of this property was made by the maternal grandfather and the mother of the plaintiffs who, at that time, the plaintiffs being minors, were the guardians of the minors, the mother being the natural guardian under the law, and the grandfather being in loco parentis. They therefore held the property as trustees for the minors, and any sale by them could be rescinded.

8. Because the sale of a thing belonging to another is null and void, and the purchaser can acquire no more than the vendor had.

Thus there are eight reasons why there was jurisdiction upon the equity side of the trial court for the determining of this case, (even if, in Porto Rico, there is any distinction except in form).

II.

The first point raised the question of what is the legal title in Porto Rico.

The theory of the defendants (appellants) is that the appellees had a complete and adequate remeday at law, by an action in ejectment, because they allege that they had, so it is argued, a legal title and were out of possession, and that a judgment in ejectment, granting the possession, would be adequate.

It will, of course, be admitted that if the legal title is not alleged to be in the plaintiffs, they could not sustain an action in ejectment. It is practically admitted by the defendants (appellants) that there would be no action open to the plaintiffs at law other than an action in ejectment, and it does not need argument nor citations to show that unless an action in ejectment is founded on the legal title, it cannot be sustained. What is the meaning of "legal title" in Porto Rico? The right to the use,

enjoyment and possession of a thing in accordance to law. What law? The mortgage law. And what right does the mortgage law recognize? The recorded title of ownership.

Both parties claim to be the owners—in other words, to have the "dominio". But who, according to the bill, has the so-called "dominio" recorded? The defendants; therefore the legal title is in them, while the plaintiffs are seeking to enforce an equitable remedy as their only adequate remedy.

The plaintiffs, by their parents and grandparents, had, at one time, the legal title, because they were in possession in good faith, and had been for nearly one hundred years, of property acquired by purchase. They thus had the legal and the equitable title. There was no registry of property; there was no title of record. About the time the father of the plaintiffs (who at the time the matter was first brought to court had just come of age this matter having previously been presented on the law side and a "non-suit" ordered (record p. 15:) died, the mortgage law went into effect, and the defendants' grantor, through fraud, it is alleged, and without notice, took the necessary LEGAL steps to acquire the legal title in accordance with the provisions of the Mortgage Law, and secured the required evidence of possession, and later the so-called "dominio" or recorded title of ownership.

> "Mortgage Law, Title XIV. Art. 389 ff. War Dept. Trans. p 74 and the Judicial Order of April seventh, 1899. Official Gazette No. 82."

It is clear that the so-called "possessory" and "dominion" titles are based upon prescription, and they merely constitute sufficient evidence that the necessary prescription has run to give one a legal title sufficient on its face. It thus becomes the legal title in Porto Rico. If, however, through fraud, or in any manner the court in granting these titles has been imposed upon, the title becomes void, and although good upon its face, it must be cancelled before any person would be able to sustain a suit based upon his having a legal title.

In the case of Amy et al. vs. Amy et al., 15 Porto Rico Reports,

387, the Court, quoting from the opinion of the judge of the District Court of Guayama, at page 403, says:—

"The action for the recovery of property arising from mere ownership can be resorted to by him who has it and can legally prove it."

"Judgment of the 14th of March, 12th of April, and 9th of May, 1862; 15th of September, 1863; 13th of November, 1864 (of the Supreme Court of Spain).

"In order successfully to exercise the action for the recovery of property it is necessary that the dominion of the property claimed be justified in favor of the claimant."

"(Judgment of the 23rd of May, 1862; 3rd of January, 1863; 4th of February, 1865.)"

"In order to resort to the action of recovery, the existence of the title in the thing sought to be recovered is necessarily required."

("Judgement of the 3rd of July, 1872.")

While the supreme court in the above case does not go as far as the trial court, yet it recognized the necessity of an action of nullity, but admits that it could be brought in the same action as the "reivindicatorio."

Sucesión Blondet v. Fantauzzi Hermanos, 14 Porto Rico Rep. p. 302.

Even if the remedy of ejectment would lie, would it be a complete and adequate remedy? Would it not then be necessary to bring an action to annul or cancel the recorded title which the defendants have? Would it not then be necessary, under the rule of property in Porto Rico, for the plaintiffs to establish their own recorded title? But a decree in equity would go to the whole matter and would clear up the titles, and in such a way that the plaintiffs, if they prevailed, could dispose of their property and have the proper record of ownership made. Thus the remedy at law, even if there **WERE ANY**, would not be adequate. In Pomeroy's Equity Jurisprudence, Vol. 6, Sec. 685, the author says:

"The jurisdiction of equity to grant the remedy of cancellation exists and will always be exercised when it is necessary to protect or maintain equitable primary estates, interests or rights; where, however, the estate, interest, or right is legal, the jurisdiction always EXISTS but its exercise depends upon the adequacy of the legal remedies,—the party being lef to his affirmative or defensive remedy at law, where full and complete justice can thereby be done. * * * * * * A doubt was formerly entertained as to whether a court of equity ought to exercise its jurisdiction to order instruments absolutely void at law, and not merely voidable, to be delivered up and cancelled, since the legal remedy of the party was adequate and complete, but no case was presented for equitable interference; but it is now well settled that jurisdiction will be exercised in such cases except where the invalidity of the instrument is apparent on its face."

The whole general principle is discussed in the leading case of Kilbourn vs. Sunderland, 130 U. S. p. 515, 32 Law Ed. 1009, where the court says:

"The jurisdiction in equity attaches unless the legal remedy, both in respect to the final relief and the mode of obtaining it, is as efficient as the remedy which equity would confer under the same circumstances."

And also in Gormley vs. Clark, 134 U. S. 349; Law Ed. 914:

"To bar equitable relief the legal remedy must be equally effectual with the equitable remedy as to all the rights of the complainant. When the remedy at law is not as practical and efficient to the ends of justice and its prompt demonstration, the aid of equity may be invoked."

Lewis vs. Cox, 23 Wall. 470 in Paine vs. Kansas R. R. Federal 552.

And the test is not whether he has a remedy at law which would be adequate, but has he a remedy at law in the same court—in this

court? And this is the question which arises when equity has once attached, and it is sought to remove it, as in this case.

> The adequacy or inadequacy of the remedy at law for the protection of one entitled on any ground to invoke the powers of a federal court is not to be conclusively determined by the statutes of the particular state in which suit may be brought.
>
> Smythe vs. Ames, 169 U. S. 516.
>
> The test is: Has he a remedy at law in this court? If he has not, then a court of equity has jurisdiction.
>
> Coler vs. Board of Commissioners, 89 Federal, 260.
>
> The doctrine that a complete and adequate remedy at law is open to the complainant and defeats the jurisdiction of a court of equity has been very much modified by recent decisions.
>
> "German Insurance Co. vs. Youngstown, 68 Fed. Rep. 456," referring to Kilbourn vs. Sunderland, supra, also Southern Railway Co. vs. Ashville, 69 Fed. Rep. 361."

Would a verdict and judgment in ejectment be a complete remedy? An important case decided by Justice Shiras and directly in point holds that in a case of ejectment the possession might not be a complete and adequate remedy, and that equity jurisdiction should be maintained.

United States vs. Flourney Live-Stock & Real-Estate Co., 69 Fed. Rep. 890, citing Kilbourn vs. Sunderland, supra.

In this case the mere possession which a court at law could give would not be complete relief, and it would still be necessary to cancel; otherwise the property could not be disposed of.

It is also a well-known principle of equity that when once a court is properly in possession of a cause for the purpose of equitable relief, it will proceed to determine the whole matter. This a court of law could not do.

New York Life Insurance Co. vs. Beard, 80 Fed. Rep. 68.

It is the law also that where there has been an enlargement of the equitable rights by statute of a state, federal courts will administer this increased equitable jurisdiction. In Porto Rico that is the case. Section 282 of the Code of Civil Procedure has provided that any conflicting claim or interest in real property may be

brought by any person. This, of course, refers to equity as well as law, the distinction not existing under the Code.

An enlargement of the equitable rights by state statutes may be administered by the circuit courts of the United States as well as by the courts of the state.

New Orleans vs. La. Construction Co., 129 U. S. 445, quoted in Harding vs. Guice, 80 Fed. Rep. 164.

Cross vs. Spitely, 121 U. S. 552.

Greeley vs. Lowe, 155 U. S. 58.

Holland vs. Challen, 110 U. S. 15.

Scott vs. Neeley, 140 U. S. 106.

Darragh vs. Manufacturing Co., 78 Fed. Rep. 7.

Davis vs. Gray, 16 Wall. 203, 221.

Morse vs. Steinbach, 127 U. S. 70.

Quoted in Darragh vs. Mfg. Co., supra.

An enlargement of equitable rights by state statute may be administered..... by courts of the United States as well as by courts of the state, and when the case is one of a remedial proceeding essentially equitable in character there can be no objection to the exercise of the jurisdiction.

Darragh vs. Manf. Co., supra.

A party going into a national court cannot lose any right or appropriate remedy of which he might have availed himself in the state court.

Davis vs. Gray, supra.

While the case of

Whitehead vs. Shattuck, 138 U. S. 146,

holds that in order that a bill to quiet title may be filed in equity the plaintiff must have possession, nevertheless it has been held that if equity alone can award the relief sought and the right of possession arises only incidentally, the bill will be retained for complete relief and the right of possession determined at same time

Gormley vs. Clark, 134 U. S., 338, 348.
Hudson vs. Randolph, 66 Fed. Rep. 216.

Where a bill was filed to set aside fraudulent proceedings under which deeds were made (as in this case certificate of dominion was obtained),

Sayers vs. Burkhardt, 85 Fed. Rep. 246,

it was a suit for cancellation. Possession is a mere incident to the right, and it may have to be determined later. It is a suit for the cancellation of certain titles secured in a semi-judicial proceeding by means of alleged fraud. Therefore, apart from the question of possession, the district court of the United States undoubtedly had jurisdiction.

III.

The reasons stated in the second point of the argument have already been discussed in arguing the first point.

The reason stated in the third point of the argument has already been partially discussed, but it is desirable to discuss it somewhat further and cite further from the law in that regard.

It must be clear from the reading of the Mortgage Law that the legal title rests in him who has the recorded dominion title, although article 33 of the Mortgage Law says:

"The record of instruments or contracts which are null in accordance with law are not validated thereby."

Because it appears from article 34, that

"Notwithstanding the statements contained in the preceding article, the instruments or contracts executed or covenanted by the person who, according to the registry has the right thereto shall not be invalidated with regard to third persons, after they have once been recorded, although later the right of the person executing them is annulled or determined by

virtue of a prior deed not recorded, or for reasons which do not clearly appear from the registry."

"Only by virtue of a recorded instrument may any later instrument, also recorded, be invalidated to the prejudice of third persons, with the exception mentioned in article 389."

"The provisions of this article may, at any time be applied to the instrument recorded, in accordance with the provisions of article 390, unless the prescription has validated or secured the interest referred to therein."

These citations show clearly that the only remedy open to plaintiffs (appellees) in this case was by means of a bill in equity. The question of who are third persons from the standpoint of chancery court will be considered later.

In the case of Amy et al. vs. Amy et al., supra, the court further says; quoting still from the opinion of the trial court:

"If we examine these questions under another viewpoint we cannot overlook the fact that the defendant Mr. Amy Parreñó shows the recorded title of dominion on the farm on which recovery is sought and the title of the defendant and the alleged right of dominion which the plaintiffs allege (,) being incompatible and contradictory (,) it is logical that one cannot prevail without the previous declaration of the nullity of the other." (Parentheses not in original).

"If the defendant shows the title recorded, which protects him in the possession of the thing claimed, it is necessary to aver, prove and declare that said title and inscription suffer the vice of nullity; and until such nullity is declared by a final order, it will be legally impossible to declare or admit the right of the plaintiffs to the same thing. To this end may be cited several decisions of the supreme court of Spain, and among others the following:

" 'The action for the recovery of property which belongs to the owner of a thing, is effective and directed against any possessor of the same thing who possesses it without title therefor, but it is not effective, nor can same be so fruitfully, when the possessor has a title more or less valid, unless

previous to said action there should be another to invalidate the same according to law. (Jugt. of the 10th Dic. 1864). Every possessor should be respected in his possession from which he cannot be deprived without trial and judgment rendered against him, and the nullity of the title or contract by virtue of which he is in possession PREVIOUSLY been (being) declared.

Judgt. 19 April, 1905.'"

While the supreme court does not go quite this far in its opinion in this case yet it recognizes on page 409 the necessity of the action for nullity, but does not decide this very point in the case cited, holding:

"The decision of this court in the case of Sucesión de Ciprian Blondet v. Fantauzzi Hermanos, of 11th of April, 1908, 14 P. R. Rep., 302, tends to support the view of the court below, but it is nevertheless possible that ONE action might be brought both to declare the nullity and for revindication. It is unnecessary to decide the question because the complaint does not ask that these deeds be annulled, and WITHOUT THE PREVIOUS ANNULLMENT NO ACTION OR REVINDICATION LIES. (Capitals not in original.)

But in the case of

Sucesión Blondet et al. v. Fantauzzi Hermanos en Liquidación, April 11, 1908, 14 P. R. Decisiones 302,

by a unanimous court, it was held in sustaining a decision of the District Court of Guayama, (p. 321):

"So that the real contention is that the conveyance of the irrigation plant and the tract of land to the defendants is null and void. Nullity then is produced by an action and it appears therefore that the right to recovery is not independent of the right of annullment so that it was necessary FIRST to seek the annullment of the title of the defendants, as it is only by this means that the title of plaintiffs could be strengthened,

because otherwise both titles cannot subsist and be harmonized."

Judgment of the Supreme Court of Spain of June 27, 1867; October 16, 1873; and May 22, 1889.

It would seem from these citations and from the citations from the Mortgage Law, that under the **RULE OF PROPERTY** in Porto Rico it would be necessary in a United States court in Porto Rico, under circumstances such as exist in this case, to apply to the equity side of the court to have the outstanding titles and inscriptions against the plaintiffs cancelled before the question of the possession or the right of possession could be determined. Therefore, there would be jurisdiction in equity, for the reason that there would be no remedy, and IF a remedy, no **ADEQUATE** remedy, at law.

IV.

Another reason for declaring that there was jurisdiction in equity is the reason set forth in point five of the argument; namely, that the defendants should have been declared trustees ex maleficio for the benefit of the plaintiffs.

> "Where one party has acquired the legal title and property to which another has a better right, a court of equity will convert him into a trustee of the owner and will compel him to convey the legal title."
>
> Monroe Cattle Co. vs. Becker, 147 U. S. 47. 37 Law Ed. 32.
>
> See also the note in the Lawyers Edition of the Supreme Court Reports, in the case of
>
> Angle vs. Chicago, St. Paul, Minn. & Mo. R. R. Co., 151 U. S. 1; 38 Law Ed. 55.

Pomeroy, in Vol. III, of his Equity Jurisprudence, third edition, uses the following language:

> "In general, whenever the legal title to property, real or personal, had been obtained through actual fraud, misrep-

resentation, concealment, or other undue influence, duress, taking advantage of one's weakness, necessity, or through any other similar means or through any other similar circumstances which render it unconscientious for the holder of the legal title to retain and enjoy the beneficial interests, equity impresses a constrictive trust on the property thus acquired in favor of the one who is naturally and equitably entitled to the same, although he may never perhaps have had any legal estate therein; and a court of equity has jurisdiction to reach the property either in the hands of the original wrong-doer, or in the hands of any subsequent holder, until the purchaser of it in good faith and without notice acquires a higher right and takes the property relieved from the trust. The forms and varieties of these trusts which are termed ex maleficio and ex delicto are practically without limit."

"The principle is applied wherever it is necessary for the obtaining of complete justice, although the law may also give the remedy of damages against the wrong-doer." (Citing Moore vs. Crawford, 130 U. S. 122.
Parish vs. Parish, 33 Oreg. 486; and 54 Pacific 352.
Savage vs. Johnston, 125 Ala. 673; and 28 So. 547, and many other cases).

In the above mentioned case of Moore vs. Crawford, Mr. Chief Justice Fuller quotes from Huxley vs. Rice, 40 Ore. 82, as follows:

"It is the settled doctrine of the court that where the conveyance is obtained for ends which it regards as fraudulent, or under circumstances which it considers as fraudulent or oppressive by intent or immediate conveyance, the party deriving title under it will be converted into a trustee in case that construction is needful for the purposes of administering adequate relief."

V.

We arrive at the conclusion stated in reason 6 that there is no inherent right to a jury trial in Porto Rico on two grounds:

(a).—That there is no statutory law of the United States which gives to the litigant a right to a trial by jury in the courts of the United States in civil cases in Porto Rico.

(b) —Because the only excuse for having a jury in civil cases in Porto Rico is under the provisions of the seventh amendment to the Constitution of the United States which does not, necessarily, apply to Porto Rico.

The Supreme Court of the United States, in so far as the question has been determined by it, has always held that the Constitution of the United States ex propio vigore does not extend to Porto Rico in all its provisions. Neither has it been extended to Porto Rico by any Act of Congress or by any department of the government of the United States.

We can see, therefore, no reason why a litigant has a right to insist upon a jury trial in Porto Rico, even in a court of the United States, and so he would not be deprived of any right inherently belonging to him, by a trial on the equity side of the court, of a case which in the United States properly should have been tried on the law side, and hence in-so-far as Porto Rico is concerned, the reasoning in those cases which hold that a party must be in possession to resort to equity to have any question of the legal title determined, would not apply.

In Wehrman vs. Conklin, 155 U. S. 317, Law. Ed. 167, it is held that section 723 of the Revised Status of the United Sstates is nothing but declaratory of the existing law. That would mean, in other words, only that a suit could not be maintained in equity when there was a complete and adequate remedy at law, for the reason that if it were, a party litigant would be deprived of his constitutional rights to a trial by jury, which right is not an right inherent in those residing in Porto Rico; while, on the other hand, it is held in the same case where the title to real property is concerned, equity has concurrent jurisdiction in cases of actual fraud, etc., and it may order cancellation.

VI.

The reason alleged in point seven must be apparent. In Porto Rico, a conveyance in fraud of minors may be rescinded. Raimundo Morales, together with the mother of the plaintiffs, was acting as their guardian, they being minors until shortly before this suit was brought. Without any authorization from a court he made the mortgage and conveyance referred to. Such conveyance could be rescinded at any time within four years after the wards came of age, the only requirement being that the minor shall have suffered a loss of one-quarter part of the value of the thing which was the object of the sale. Therefore, whether the defendants (appellants) were bona fide purchasers or not, the sale and mortgage could be rescinded.

Civil Code of Porto Rico, Sec. 1257 (Old Code 1290), 1258, 1266.

Hoyt vs. Blandin, 14 Howard, 347; Law Ed. 449.

VII.

The mere statement of the reasons advanced in point eight must be sufficient.

(Quoting from Gaines vs. New Orleans 73 U. S. 642).

"One of the questions in the case was whether those who purchased property from the apparent heir or universal legatee could defend against the claim of the legal and actual heir, and the court decided they could not. In discussing the question they say

" 'Our Code (Louisiana) article 2427 declares that "the sale of a thing belonging to another is null," and that the purchaser of the property in dispute can, under no circumstances, acquire any greater right or any better title to it than their vendor had. As to the defense of good faith the court decides 'that all the law has done in favor of the purchaser in good faith is to give him the benefit of the limitation by prescrip-

tion, though the property so purchased may belong to another person,' and refers in support of that position to the Civil Code, arts. 3442, 3450, 3451."

Gaines vs. New Orleans, 73 U. S. 642; 18 Law Ed. 963.

Therefore a court of equity would be the only court that could properly determine a case of this kind.

VIII.

There are two more questions to be considered in this case which do not involve the question of the jurisdiction of a court of equity, and they are:

(a).—Whether the defendants (appellants) were, in law and fact, bona fide purchasers for value and

(b).—The effect of the judicial order of April 7, 1899, in regard to notice, etc., as to whether or not it is an unreasonable shortening of the period of limitation.

It is doubtful whether the doctrine of "innocent purchaser for value" applies at all in Porto Rico. It is purely a question of "who has the best title?" and the standing of the person with "justo titulo" and "con buena fé" depends upon the Civil Code, and always "justo titulo" and "buena fé" must go together. Of course if the title by which defendants acquired was fraudulent and the vendor had no real title to the property, the title by which they, the defendants, acquired was void and they had no "justo titulo."

It is true there is a dominion title (so-called) or title of ownership in favor of the defendant firm (appellants), but all titles of ownership, unless founded on "justo titulo," which is not alleged in this case, are founded on prescription for thirty years. This is the only way ownership (dominio) can be recognized when claim is founded on prescription. So says the "Ley Comun," the Civil Code, sec. 1860 (Old Code 1959).

It has been from the earliest times a recognized principle that ownership can only be secured by adverse possession after thirty years, and this is the rule under the Civil Code which is the law of the land. The Mortgage Law is only a law of procedure. The Judicial Order of April 7, 1899, does not repeal or modify section

1890 (Old Code 1959) of the civil law, but it does modify section 1858, (Old Code 1957), and as it especially refers to 1957 and not to 1959, it clearly was not intended to modify 1959; and furthermore where there is a conflict between the Civil Code and any special law, the Civil Code prevails.

Civil Code Secs. 12 and 1572.
Mortgage Law Secs. 33, 34, and 35.
Galindo's Legislación Hipotecaria, Vol. 2 p. 357, Sec, 1, ff.

The Mortgage Law being a special law, and hence the order modifying it a special law, and it being in conflict with the Civil Code the must prevail; therefore, there being no "justo titulo" (no conveyance to Raimundo Morales) it would be only by thirty years' prescription that he could have acquired title of ownership to the property in accordance with the Civil Code which is the law of the land.

Furthermore, there can be no doubt but that Camile Taboas was the agent of the defendants (appellants) and that he had knowledge of the defect in the title of Raimundo Morales, appellants' vendor. (Record pp. 46., 47, 48.) From the record it also appears, same pages, that the defendants (appellants) had notice of the defect. Furthermore, it must appear from the record, pages 29, 39 that at the time of the conveyance the plaintiffs (appellees) were in open and notorious possession of the property in dispute. That the knowledge of the agent is knowledge of his principal, in maters pertaining to the business that he is required to do under his agency, does not require citations. Nor is it necessary, as far as the jurisprudence of the United States and England goes, to cite law to the effect that it is the duty of one buying property in the possession of another to make inquiry as to whom the property belongs.

Phelan vs. Brady, 8 L. R. A. 211.

Green vs. Slater, 4 Johns Ch. 37; 1 Law Ed. New York Chancery 756. Courts of equity require that the person at least go to the extent of finding out if the alleged vendor has possession or not. These

defendants (appellants) took title to this property when it was in the actual, physical, possession of at least one of the plaintiffs (appellees), who was notoriously the owner, and whom the whole neighborhood recognized as owner, and yet the appellants did not take the trouble to inquire, either through their agent or otherwise, what rights these plaintiffs had. He undoubtedly had knowledge, and if he did not inform his principals, he should have. Toboas was clearly the agents of the defendants in this transaction.

31 CYC. 1216, 1217, 1227.

In all his dealings with Raimundo Morales Taboas was acting for the appellants, not for Raimundo Morales, because the transaction was against Raimundo's wish.

IX.

At the time of the conveyance to the defendants the consideration was only the amount of the mortgage which had THERETOFORE been made upon the property. (Record p. 39, findings IV and V. Also record pp. 48, 49, and 50.)

It is the law in the United States that the mortgagee acquires his title subject to the equities against the mortgagor, and in this respect a mortgagee differs from the "innocent purchaser for value." The defendants first became mortgagees and afterwards vendees without any further consideration passing. Were they not subject to the equities existing in favor of the mortgagor's grandchildren?

Rapps vs. Gottlieb 36 N. E. 1050.

It is a well-known doctrine that "a creditor who takes a mortgage on realty merely as security for the payment of the debt or demand already due him, and without giving any new consideration or being induced to change his condition in any manner IS NOT ENTITLED to the protection accorded to a BONA FIDE purchaser for value as against prior liens or equities.

27 CYC. 1191.

Gest vs. Packwood 34 Fed. Rep. 374.
Gest vs. Packwood 39 Fed. Rep. 534.
Hill vs. Hite 79 Fed. Rep. 828.
Napa Valley Mining Co. vs. Rhinehardt, 42 Mo. Appeals, 182.

Manhattan Co. vs. Evertson 6 Paige Ch. (N. Y.) 457 and notes; Lawyers' Co-op. Ed. N. Y. Chan. Reps. Vol. 3 p. 1061.

Vol. 2 Pomeroy's Equity Jurisprudence 208.

Thus the defendants (appellants) were not BONA FIDE purchasers for value without notice, because, in the first place, they were not purchasers for value at all, taking the property in payment of a past-due debt; and because they had constructive notice by the possession of at least one of the plaintiffs.

Phelan vs. Baur 8 L. R. A. 211, and notes.
Green vs. Slater 4 John's Ch. 38.

And in addition they had actual notice through their agent and representative Camilo Taboas. Therefore, they should not be considered as BONA FIDE purchasers for value without notice.

The effect of the Judicial Order of April 7, 1899 would be to limit or restrict the period of limitations.

Equity will interfere to prevent the bar of the statute of limitations where it would be inequitable to enforce it; and, conversely, a court of equity would not consider title fraudulently acquired, solely under statute, good title by prescription.

Story's Equity Jurisprudence 1521.
Booth vs. Warrington 4 Payne's Par. Cas. 163.
Bailey vs. Glover 88 U. S. 347; 22 Law Ed. 638.
Sterns vs. Paine 48 U. S. 819; 12 Law Ed. 928.
Prevost vs. Gratz 6 Wheat. 481; 5 Law Ed. 311.
Moore vs. Greene 60 U. S. 69; 15 Law Ed. 533.
Rosenthal vs. Walker 111 U. S. 185; 28 Law Ed. 395.

It is undoubtedly true that the military commander as representing the Commander-in-Chief of the army during a military

government may make laws with similar force and effect that the legislature could if the territory had been organized. It is true also that the legislature can, if it is properly done, extend the limit of time for prescription or limitation; it can even determine that, for a certain period, the laws of prescription and limitation be declared in abeyance during war, etc., as was done in Texas.

Fletcher vs. Perkins 60 Cranch p. 87 and notes in 3 Law Ed. 162.

But it is uniformily the rule that the legislature cannot do this in such a way that reasonable time is not given to property owners to protect their interest; nor can it be done in such a way as to infringe existing rights, or, as it is expressed, "vested interests."

If a twenty-year law can be changed to six, why could it not, with equal force, have been changed to one year, or six months, or three months? and the period of publication, if it could have been changed from thirty to fifteen days, why could it not have been changed to three days with equal force? In the case at bar the law (judicial order) was promulgated April 7, 1899, a few weeks after the application was made to the municipal court of Naranjito for a conversion to "dominio" title. The court ordered the publication of a notice for one issue, and at the end of fifteen days the judge ordered the conversion to "dominio" and issued a certificate to the registry to that effect.

The plaintiffs were infants; they had no notice; they were not summoned; proceedings were entirely ex parte; hence the question raised by the court below "Did these plaintiffs have reasonable notice under the judicial order referred to?" and this especially when, as in this case, the time (six years) had already elapsed before the promulgation of the order, and the application might have been made at any time after promulgation.

Furthermore, as has been argued, the judicial order referred to is in direct conflict with the Civil Code which should govern, as a matter of course, because the judicial order is merely a law of procedure, while the Civil Code is declaratory of substantive rights.

The same rule applies in this case as in cases involving the

limitation of actions which was well stated in a note to McKisson vs. Davenport 10 L. R. A. p. 512.

Where it is said:

"An existing right of action cannot be taken away by shortening the period of limitation to the time which has already run."

Capman vs. Douglas 107 U. S. 248; 27 Law Ed. 378,

Where it is held:

"An existing right of action cannot be taken away by mere legislation as by shortening the period of limitation to the time which has already run."

The theory is that a reasonable time after the passage of the limiting act must be allowed before the limititation begins to run, and this is especially true where the time under the new law has already run.

Sohn vs. Watterson 17 Wall. 596.

In the case of Gilbert vs. Eckman 45 L. R. A. p. 120, although the question raised was a different one, the principle laid down in the opinion and quoted by Judge Cooley in his work on Constitutional Limitations is directly applicable to this case; that is, that "the statute which shortens the period for bringing an action without providing a reasonable time for bringing it after the statute takes effect is unconstitutional as (being) a deprivation of property without due process of law, even if a period of several months should elapse between the passage of the act and the time when it goes into effect.

Cooley, Constitutional Limitations, p. ————
Best vs. Baumgardner 1 L. R. A. note page 359,

where it is stated that unless reasonable time is given, such statutes are void, and cites:

Pereles vs. Watertown 6 Biss. 79
Berry vs. Ransdall 4 Met. (Kan.) 292
Gospel vs. Wheeler 2 Gall. 105
Robinson vs. McGee 9 Cal. 81.

A state has no right to divest vested interests whether such an attempt be made by legislative enactment or by a change in the constitution of the state * * * * *"

8 CYC. 895 and note.

It has always been held with reference to new statutes changing the time for prescription or limitation, that a reasonable time must be granted for the protection of one's rights.

8 CYC. 1020, 1021.
8 CYC. p. 921 and note 53.

Where statutes are made restrictive by their terms they should be construed as strictly as possible.

8 Cyc. 1022, 1023.

The period fixed by the legislature is subject to review by a court, and will be deemed unreasonable where it is so manifestly inadequa as to amount to a denial of justice.

In the present case there was no time at all. Whatever right the appellees had to attack the false and fraudulent possession of their property (at law) was taken from them AT ONCE while they were still minors.

25 Cyc. 986, 987.

The question of reasonable time is the paramount one.

Gerry vs. Anderson 95 U. S. 628.

"A new statute of limitations cannot limit existing claims without allowing a reasonable time after its passage for parties to bring action."

Horbach vs. Miller 4 Neb. 31.

Holcomb vs. Tracy 2 Minn. 241.

Lockhart vs. Weiser 2 Bush. (Kan.) 231.

In the case of

Hawkins vs. Barney's Lessee 5 Peters 444; 8 Law Ed. 193.

The same PRINCIPLE is laid down, but statute is upheld, solely on the ground that a reasonable time WAS given.

"A statute that bars a party's right of action without any provision for a period within which the action may be brought is unreasonable and obnoxious to the objection that it impairs the rights of private property; and subject to this exception such laws are valid and applicable, and the remedy merely through retrospective operation is no objection to them."

Wheeler vs. Jackson, 137 U. S. 250-51, note to 34 Law Ed. p. 660,

in which a large number of cases are cited among them

Ward vs. Kilts 12 Wend. 137,

Eckstein vs. Schoomaker, 8 Wheat. 15,

Fray vs. Kirk, 4 Gill. & J. 509,

Dickson vs. Bauey, 30 U. S. 458; 8 Law Ed. 190.

Satterlee vs. Matherson 16 Serg. R 169.

Weister vs. Hale 52 Penn. 474,

Koshkonong vs. Burton 104 U. S. 668,

where it is held in a note in the same case, 26 Law Ed. 887, "but if the time for bringing the action is not reasonable, the statute is void."

In the note to Fletcher vs. Perkins, 60 Cranch 89, the note being in 3 Law Ed., pages 4 and 5, Justice Chase declared:

> "That an Act of the legislature contrary to the great first principles of the social compact cannot be considered the rightful exercise of legislative authority."

THE UNIVERSAL CONCLUSION SEEMS TO BE FROM THESE CASES THAT IF A LEGISLATURE PASSES AN ACT LIMITING THE TIME OF LIMITATION WITHOUT GIVING A REASONABLE TIME FOR THE PERSON AFFECTED THEREBY TO PROTECT HIS RIGHTS, SUCH AN ACT OF THE LEGISLATURE IS VOID.

XI.

This is the conclusion arrived at, not so much from the grounds argued in the brief of the appellees, nor from those stated in the opinion of the judge of the trial court, but from the reasons stated by Justice Chase in Flecher vs. Perkins, supra, that such an act of the legislature is "contrary to the great first principles of the social compact." In other words, the right is existent in the people, with or without the constitution, that no legislation shall be passed which limits, without reason, property rights, or the time within which they may protect them.

We do not think it is necessary for the determination of this principle that any determination be made as to whether or not the provisions of art of the amendments to the Constitution of the United States apply in Porto Rico, or not, for such an order, evenby a military officer was void as a biolation of the inherent rights of the individual. It would furthermore have been construc-

tive notice to the defendants and they could not be held to be bona fide purchasers for value without notice, as maintained in the opinion of the trial court (record pages 26, 27) and it would be also a further reason for a court of equity taking jurisdiction of this case.

In consideration of all the foregoing it is respectfully requested that the decree of the trial court in this cause be sustained.

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